

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2299

Introduced by Assembly Member Blakeslee

February 18, 2010

~~An act to amend Section 39510 of the Health and Safety Code, relating to air resources. An act to add Section 39602.7 to the Health and Safety Code, relating to air pollution.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2299, as amended, Blakeslee. ~~Air Resources: The State Air Resources Board. Board: rules and regulations: impacts analysis.~~

Existing law authorizes the State Air Resources Board to regulate pollution from primarily vehicular sources, and designates the state board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases.

This bill would require the state board to complete and place into the rulemaking record an impacts analysis for a proposed rule, as provided. The bill would authorize a person to request the state board to submit the impacts analysis for external peer review in accordance with specified requirements.

~~Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution, and air pollution control districts and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law states that the state board is in the California Environmental Protection Agency, and requires the state board to consist of 11 specified members.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 39602.7 is added to the Health and Safety*
- 2 *Code, to read:*
- 3 *39602.7. (a) For the purposes of this section, the following*
- 4 *terms have the following meanings:*
- 5 *(1) "Air quality basis" mean those foundations of a rule that*
- 6 *are premised upon, or derived from, empirical data or other*
- 7 *scientific findings, conclusions, or assumptions establishing a*
- 8 *regulatory level, standard, or other requirement for the*
- 9 *improvement of air quality to protect public health or the*
- 10 *environment.*
- 11 *(2) "Impacts analysis" means an evaluation of the secondary*
- 12 *impacts of a proposed rule quantified to the extent feasible and*
- 13 *appropriate and otherwise qualitatively described.*
- 14 *(3) "Rule" means a rule, regulation, order, or standard or the*
- 15 *amendment, supplement, or revision of a rule, regulation, order,*
- 16 *or standard, adopted by the state board to implement, interpret,*
- 17 *or make specific a law enforced or administered by the state board,*
- 18 *or to govern the state board's procedure.*
- 19 *(4) "Secondary impacts" means the reasonably identifiable and*
- 20 *significant impacts of a proposed rule that do not meet the*
- 21 *definition of "air quality basis" and that are premised upon, or*
- 22 *derived from, empirical data or other scientific or economic*
- 23 *findings, conclusions, or assumptions, which include, but are not*
- 24 *limited to, impacts to any of the following:*
- 25 *(A) Public health and safety not related to air quality.*
- 26 *(B) Other environmental regulatory programs and objectives.*
- 27 *(C) In-state jobs.*
- 28 *(D) The General Fund due to in-state job impacts.*
- 29 *(E) Economic impacts to persons regulated by the proposed*
- 30 *rule.*
- 31 *(b) The state board shall complete and place into the rulemaking*
- 32 *record for a proposed rule an impacts analysis for the proposed*

1 rule, at or before the time the proposed rule is made available to
2 the public, at a public workshop or for purposes of public comment.

3 (c) (1) Within 15 calendar days after the date the proposed rule
4 is made available to the public as described in subdivision (b), a
5 person may request the state board to submit the impacts analysis
6 created pursuant to subdivision (b) for external peer review
7 pursuant to this subdivision.

8 (2) If, within 15 calendar days after making the request, the
9 person requesting the external peer review enters into an
10 enforceable agreement with the state board that requires that
11 person to fully reimburse the state board for all costs associated
12 with conducting the external peer review, the state board shall
13 enter into an agreement with the National Bureau of Economic
14 Research, the University of California, the California State
15 University, or a group of economists of comparable stature and
16 qualifications to conduct the external peer review of the impacts
17 analysis of the rule proposed for adoption. The President of the
18 University of California is requested to select the peer review entity
19 for purposes of this paragraph.

20 (d) (1) A person shall not serve as an external peer reviewer
21 pursuant to subdivision (c) if that person participated in the
22 development of the impacts analysis of the proposed rule.

23 (2) The person who requests the external peer review pursuant
24 to this section, a person affiliated with that requester, and
25 personnel of the state board shall not participate in the selection
26 of the individual external peer reviewers or contact or
27 communicate with the individual external peer reviewer during
28 the peer review.

29 (3) The state board may contact or communicate with an
30 external peer reviewer for the purpose of entering into a contract
31 with the reviewer, as described in subdivision (c), and for purposes
32 of providing information as described in paragraph (1) of
33 subdivision (e).

34 (4) The identity of the individual external peer reviewers shall
35 remain confidential until the external peer reviewer submits the
36 written report to the state board.

37 (e) If the requirement of paragraph (2) of subdivision (c) is met,
38 the state board shall not take any action to adopt the final version
39 of a rule unless all of the following conditions are met:

1 (1) The state board submits the proposed rule, including the
2 impacts analysis, and other appropriate materials on which the
3 impacts analysis of the proposed rule are based, to the external
4 peer reviewer for evaluation.

5 (2) The external peer review entity prepares a written report
6 that contains an evaluation of the impacts analysis within 90 days
7 of receiving the materials listed in paragraph (1) from the state
8 board. If the external peer review entity finds that the state board
9 has failed to demonstrate that the impacts analysis is based upon
10 sound scientific or economic knowledge, methods, or practices,
11 the report shall state that finding and the reasons explaining that
12 finding.

13 (3) The state board accepts the finding of the external peer
14 review entity, in whole or in part, and revises the proposed rule
15 accordingly, or rejects the finding. If the state board disagrees
16 with any aspect of the findings of the external peer review entity,
17 it shall explain, and include as part of the rulemaking record, its
18 basis for arriving at that determination in the adoption of the final
19 rule, including why it has determined that the impacts analysis is
20 based on sound scientific and economic knowledge, methods, and
21 practices.

22 (4) A public hearing is conducted to provide opportunity for
23 public comment on the written report of the external peer review
24 entity or public comment on the explanation of disagreement with
25 the report included in the rulemaking record by the state board.
26 The state board shall not issue notice of a public hearing on
27 adoption of the final version of a rule until the public hearing
28 described in this paragraph has concluded.

29 (f) Notwithstanding subdivision (e), if the external peer review
30 entity fails to provide a written report within 90 days, the state
31 board may act to adopt the final version of the rule.

32 (g) The requirements of this section do not apply to an
33 emergency regulation adopted pursuant to subdivision (b) of
34 Section 11346.1 of the Government Code.

35 (h) This section shall not be construed to limit the authority of
36 the state board to adopt a rule pursuant to the requirements of
37 any other law that authorizes or requires the adoption of the rule.

38 ~~SECTION 1. Section 39510 of the Health and Safety Code is~~
39 ~~amended to read:~~

1 ~~39510. (a) The State Air Resources Board is continued in~~
2 ~~existence in the California Environmental Protection Agency. The~~
3 ~~state board shall consist of 11 members.~~

4 ~~(b) The members shall be appointed by the Governor, with the~~
5 ~~consent of the Senate, on the basis of their demonstrated interest~~
6 ~~and proven ability in the field of air pollution control and their~~
7 ~~understanding of the needs of the general public in connection~~
8 ~~with air pollution problems. Six members shall have the following~~
9 ~~qualifications:~~

10 ~~(1) One member shall have training and experience in~~
11 ~~automotive engineering, or closely related fields.~~

12 ~~(2) One member shall have training and experience in chemistry,~~
13 ~~meteorology, or related scientific fields, including agriculture or~~
14 ~~law.~~

15 ~~(3) One member shall be a physician and a surgeon, or an~~
16 ~~authority on the health effects of air pollution.~~

17 ~~(4) Two members shall be public members.~~

18 ~~(5) One member shall have the qualifications specified in~~
19 ~~paragraph (1), (2), or (3), or shall have experience in the field of~~
20 ~~air pollution control.~~

21 ~~(c) Five members shall be board members from districts who~~
22 ~~shall reflect the qualitative requirements of subdivision (b) to the~~
23 ~~extent practicable. Of these five members, one shall be a board~~
24 ~~member from the south coast district, one shall be a board member~~
25 ~~from the bay district, one shall be a board member from the San~~
26 ~~Joaquin Valley Unified Air Pollution Control District or, if the~~
27 ~~unified district is abolished, from the San Joaquin Valley Air~~
28 ~~Quality Management District if created pursuant to Section 5 of~~
29 ~~Chapter 915 of the Statutes of 1994, one shall be a board member~~
30 ~~from the San Diego County Air Pollution Control District, and~~
31 ~~one shall be a board member of any other district.~~

32 ~~(d) Any vacancy shall be filled by the Governor within 30 days~~
33 ~~of the date on which it occurs. If the Governor fails to make an~~
34 ~~appointment for any vacancy within the 30-day period, the Senate~~
35 ~~Committee on Rules may make the appointment to fill the vacancy~~
36 ~~in accordance with this section.~~

37 ~~(e) While serving on the state board, all members shall exercise~~
38 ~~their independent judgment as officers of the state on behalf of the~~
39 ~~interests of the entire state in furthering the purposes of this~~
40 ~~division. No member of the state board shall be precluded from~~

1 ~~voting or otherwise acting upon any matter solely because that~~
2 ~~member has voted or acted upon the matter in his or her capacity~~
3 ~~as a member of a district board, except that no member of the state~~
4 ~~board who is also a member of a district board shall participate in~~
5 ~~any action regarding his or her district taken by the state board~~
6 ~~pursuant to Sections 41503 to 41505, inclusive.~~

7 ~~(f) Notwithstanding subdivision (e) of Section 1 of Chapter~~
8 ~~1201 of the Statutes of 1991, this section shall become operative~~
9 ~~on January 1, 1994.~~

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